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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 580

THE UNITED STATES, PETITIONER

v.

UNION PACIFIC RAILROAD COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims, entered in the above-entitled case on November 7, 1949.

OPINION BELOW

The opinion of the Court of Claims (R. 8) is reported at 86 F. Supp. 907.

JURISDICTION

The judgment of the Court of Claims was entered on November 7, 1949 (R. 8-9). The jurisdiction of this Court is invoked under 28 U. S. C. 1255.

QUESTION PRESENTED

Whether Section 16(3) (a) of the Interstate Commerce Act, requiring that "all actions * * * by

carriers * * * for recovery of their charges * * * shall be begun within two years from the time the cause of action accrues, and not after * * *", applies to suits by carriers against the United States.

STATUTES INVOLVED

The Interstate Commerce Act, § 16(3)(a), as amended by the Transportation Act of 1920, § 424, 41 Stat. 456, 491-492, the Act of June 7, 1924, 43 Stat. 633, and the Transportation Act of 1940, § 11(a)(2), 54 Stat. 898, 912-913, 49 U. S. C. 16(3)(a), provides:

> All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within two years from the time the cause of action accrues, and not after.

28 U. S. C. 2501 provides:

> Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed * * * within six years after such claim first accrues.

STATEMENT

Respondent, a "common carrier by railroad * * *, engaged in interstate commerce and subject to the Interstate Commerce Act" (R. 1), brought this action against the United States to recover its charges for transportation services (R. 1-6). The services were rendered at various times during the period from 1943 to 1946 for the Federal Surplus Commodities Corporation, the

Commodity Credit Corporation, the War Food Administration, and the Production and Marketing Administration—all agencies of the Department of Agriculture (R. 1, 7). After delivery of each of the shipments in question respondent submitted its bills in the manner prescribed by the Comptroller General, but payment was withheld (R. 1-2, 8).[1]

This suit was filed on December 22, 1947 (R. 1), over two years after most of the shipments had been completed and over four years after the completion of some (R. 3-6, 8).[2] The parties stipulated that, if this action might be maintained within six years under the general statute of limitations applying to suits in the Court of Claims (28 U. S. C. 2501, *supra,* p. 2) despite the requirement in Section 16(3)(a) of the Interstate Commerce Act (*supra,* p. 2) that all actions by carriers for recovery of their charges be instituted within two years, then respondent could recover (R. 8). In a *per curiam* opinion relying upon its decision in *Seaboard Air Line Railroad Co.* v. *United States,* 113 C. Cls. 437, certiorari denied, 338 U. S. 848, the Court of Claims rejected the Government's contention that the bulk of respondent's claim, based on shipments com-

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[1] Of the bills for which respondent sought payment in its petition to the court below, two were paid and one was withdrawn before the court's decision, thus reducing the total claim from $1,844.17 to $1,803.79 (R. 8).

[2] Of respondent's total claim of $1,803.79, $1,685.99 was for shipments completed more than two years prior to this suit and $117.80 for shipments completed within two years (R. 8).

pleted more than two years before commencement of this suit, was barred by Section 16(3)(a) (R. 8). Accordingly, respondent was awarded a judgment for the full amount of its claim (R. 9).

REASONS FOR GRANTING THE WRIT

The Court of Claims has adhered to its prior decision in *Seaboard Air Line Railroad Co.* v. *United States,* 113 C. Cls. 437, following the refusal of this Court to review that decision (338 U. S. 848).[3] A survey, made shortly after the decision in the instant case to determine the present importance of the question involved, discloses 123 actions, pending in the Court of Claims and filed more than two years after completion of their services, in which carriers are seeking to recover $11,423,799.98 in charges from the Government.[4] In these suits, the number of which reflects the extent of the Government's role as the nation's largest shipper, it is now futile to continue to interpose the defense which seems to be afforded by Section 16(3)(a) of the Interstate Commerce Act. Accordingly no course is open to the Government in the Court of Claims, other than to abandon that defense, which in many of the cases is the only one available, unless review of the instant decision can be had. Because we believe the court below errs in its refusal

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[3] In addition to the instant case, see *Atlantic Coast Line R. R. Co.* v. *United States,* C. Cls. No. 48826, decided December 5, 1949.

[4] The same question is involved in approximately 135 cases now pending in the district courts involving about $465,000.

to apply Section 16(3)(a) to suits against the Government; because of the magnitude, both in number and amount, of the claims involved; because of the recurrent character of the problem; and because of the peculiar factor in relation to the *Seaboard* petition discussed in the following paragraph, we again seek review.

In the *Seaboard* case (No. 212, this Term), the brief opposing our petition for certiorari was rested almost exclusively upon the argument that the claim involved was for railway mail pay, was not governed by the provisions of the Interstate Commerce Act and was therefore of no general importance. While the court below, in dealing with the present problem, does not suggest any distinction between suits for mail pay and suits for other transportation charges (see instant opinion, R. 8), it is possible that the argument urged by the respondent in the *Seaboard* case has merit, or at least may have had an important part in the denial of our petition therein. The question of importance as to the general applicability of Section 16(3)(a) to suits against the Government, which we thought was presented by the *Seaboard* case, cannot be avoided in the case at bar.[5] Unless the Court of Claims is justified in reading the statutory limitation on "all actions at law by car-

[5] We assume that the denial of certiorari is not to be interpreted as expressing any view on the merits of the controversy. See, *e.g.*, the opinion of Mr. Justice Frankfurter respecting the denial of the petition for writ of certiorari in *State of Maryland v. The Baltimore Radio Show, Inc.*, 338 U. S. 912, 917-919.

riers" as if it said "all actions at law by carriers except actions against the Government," respondent has no right to recover.

1. The inclusive and unambiguous language of Section 16(3)(a), with no remote suggestion of any exception, in a comprehensive and frequently reconsidered statute in which exceptions are made explicit where they are intended, would appear to preclude the result reached by the court below. There is nothing in the legislative history or purpose of the section to warrant judicial addition to the words Congress chose. See *Browder* v. *United States,* 312 U. S. 335, 338. Indeed, the "paramount policy of § 16 * * * to secure promptness in collection * * *" (*Midstate Co.* v. *Penna. R. Co.,* 320 U. S. 356, 367) requires, in serving the important regulatory purpose of keeping carriers' financial affairs relatively current, that there be no exception with respect to the carriers' largest single client.

Finding no exception in the plain language of Section 16(3)(a), the court below justifies its exclusion of suits against the Government essentially on the grounds that (1) to apply it to such suits would effect a repeal by implication of 28 U. S. C. 2501, which permits claims over which the Court of Claims has jurisdiction to be sued upon within six years of their accrual (see *Southern Pacific Co.* v. *United States,* 62 C. Cls. 391, 398), and (2) the Government is different in relevant respects, from

other shippers (*id.* at 399-402).[6] Neither of these arguments, we submit, will bear analysis.

Hesitancy to construe statutes as effecting repeals by implication is limited by the well-defined principle that a statute applicable to a specific class of cases will, within that class, supersede a more general statute. *MacEvoy Co.* v. *United States,* 322 U. S. 102, 107; *Shelton* v. *United States,* 165 F. 2d 241 (C.A.D.C.). This principle, precisely relevant here, has operated to bar suits against the Government brought within the six-year jurisdictional limitation period but not within the lesser period prescribed for the cause of action under a specific statute. *United States* v. *A. S. Kreider Co.,* 313 U. S. 443 (five years, under Revenue Act of 1926, § 1113(a), 44 Stat. 9, 116); *Christie-Street Commission Co.* v. *United States,* 136 Fed. 326 (C. A. 8) (two years, under R. S. 3227, 26 U. S. C. 3772); *Kahn* v. *United States* 55, C. Cls. 271, affirmed, 257 U. S. 244 (same); *Fort Pitt Gas Co.* v.

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[6] *Southern Pacific Co.* v. *United States, supra,* was the first decision in which the Court of Claims held inapplicable in suits against the Government the limitations now appearing in Section 16(3)(a), after announcing a contrary view in earlier decisions. See *Schaff* v. *United States,* 59 C. Cls. 318, 321-322; *Lancaster* v. *United States,* 60 C. Cls. 80; *Central R. R. Co. of New Jersey* v. *United States,* 60 C. Cls. 578, certiorari dismissed, 270 U. S. 644; *Wabash Ry. Co.* v. *United States,* 59 C. Cls. 322, affirmed, 270 U. S. 1; *Northern Pac. Ry. Co.* v. *United States,* 59 C. Cls. 122; *Western Pac. R. R. Co.* v. *United States,* 59 C. Cls. 67, reversed on other grounds, 268 U. S. 271. The reasoning of the *Southern Pacific* decision was reaffirmed in *Seaboard Air Line Railroad Co.* v. *United States, supra,* which is in turn announced as the authority for the present decision. Accordingly, we direct our arguments here to the grounds stated by the court in the *Southern Pacific* case.

United States, 49 C. Cls. 224 (same); cf. *Mejia* v. *United States,* 152 F. 2d 686 (C. A. 5) certiorari denied, 328 U. S. 862 (one year, Louisiana wrongful death statute). In *United States* v. *A. S. Kreider Co., supra,* referring to the provision in Section 24(20) of the Judicial Code (now 28 U. S. C. 2401(a)), fixing for Tucker Act suits in the district courts the same general six-year limitation applicable in the Court of Claims, this Court said (313 U. S. at 447):

> We think the quoted language was intended merely to place an outside limit on the period within which all suits might be initiated under § 24(20). Clearly, nothing in that language precludes the application of a different and shorter period of limitation to an individual class of actions even though they are brought under § 24(20). Phrasing the condition negatively, Congress left it open to provide less liberally for particular actions which, because of special considerations, require different treatment.

The two-year limitation contained in Section 16(3)(a) is a measure of the carrier's right to sue for its charges; lapse of the specified time destroys the right. *Phillips* v. *Grand Trunk Ry.,* 236 U. S. 662, 667-668; *Louisville Cement Co.* v. *I. C. C.,* 246 U. S. 638, 642; *Kansas City So. Ry.* v. *Wolf,* 261 U. S. 133, 138-140; *William Danzer Co.* v. *Gulf R. R.,* 268 U. S. 633, 636; *Midstate Co.* v. *Penna. R. Co., supra.* In refusing to enforce this limita-

tion in suits against the Government, the court below endows the merely "negative" restriction of 28 U. S. C. 2501 with the power of reviving a cause of action which no longer exists. The six-year limitation in 28 U. S. C. 2501 applies to claims "of which the Court of Claims has jurisdiction * * *." As applied below, this statute has the unintended effect of creating a right where there is no "claim" to which Court of Claims jurisdiction can attach. Cf. *Finn* v. *United States,* 123 U. S. 227, 232; *Phillips* v. *Grand Trunk Ry., supra,* at 667.

This result, unwarranted by the principle of statutory construction invoked by the court below, finds equally little justification in any supposedly or actually unique characteristics of the Government as shipper or litigant. In *Southern Pacific Co.* v. *United States, supra,* the Court of Claims supported its refusal to apply the two-year limitation in suits against the Government by pointing to the presence of two exceptions for Government transportation in the Interstate Commerce Act—49 U. S. C. 22, permitting carriers to provide such transportation free or at reduced rates, and 49 U. S. C. 3(2), permitting extension of credit to the Government without authorization by the Interstate Commerce Commission. But these provisions in no way affect either the feasibility or the desirability of requiring carriers to bring suit for their charges within two years. If anything, such

explicit exceptions for Government transportation tend to support the conclusion that none were to be implied elsewhere in the Act.[7]

Finally, contrary to the suggestion in *Southern Pacific Co.* v. *United States, supra,* at 401, the carrier is not hindered in suing the Government, like any other shipper, within two years by the fact that the Government, required to pay transportation bills on presentation (49 U. S. C. 66), may deduct any overpayments from amounts subsequently found to be due the carrier. The carrier's cause of action accrues when it makes delivery. If it is paid no suit is necessary. If it is not paid at all or only paid in part as a result of a deduction because of prior overpayments, the carrier's time to sue runs from the time when the deduction was made, not from the time of the original shipment. Cf. *Wabash Ry. Co.* v. *United States,* 59 C. Cls. 322, 327-328, affirmed, 270 U. S. 1. In such cases,

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[7] This conclusion has been adopted by the Interstate Commerce Commission, the repeated recommendations of which were followed by Congress in enacting, in the Transportation Act of 1920, the limitation provisions in Section 16(3). See the following Annual Reports of the I.C.C.: No. 27 (1913) pp. 80-81; No. 28 (1914) p. 65; No. 29 (1915) p. 68; No. 31 (1917) p. 68. In *United States* v. *Director General,* 80 I.C.C. 143, 150-151, that agency, whose interpretations of Interstate Commerce Act provisions recommended by it to Congress are entitled to even more than their ordinarily "great weight" (*United States* v. *American Trucking Ass'ns,* 310 U. S. 534, 549), held that there was nothing in the Act's exceptions with respect to the Government which would warrant implying one where none had been expressed. Indeed, it stressed specific exceptions elsewhere in the Act as a basis for its decision that the language of Section 16 even included the Government as plaintiff.

questions relating to earlier shipments, on which the Government claims overpayments were made, would be matters of defense for the Government, not part of the carrier's cause of action for its charges presently withheld in whole or in part.

2. The importance of the question herein, measured in part by the large number of pending suits in which it is presented (see p. 4, *supra*), has recently been enhanced by the Act of June 29, 1949, Pub. L. No. 138, 81st Cong., 1st sess., which adds to Parts II, III, and IV of the Interstate Commerce Act (covering, respectively, motor carriers, water carriers, and freight forwarders) provisions establishing the same limitations as those in Part I, Section 16(3). This statute is designed to establish uniformity among the four parts of the Act. S. Rep. No. 83, 81st Cong., 1st sess., p. 1; H. Rep. No. 766, 81st Cong., 1st sess., pp. 1-2. Referring to the new provisions, substantially identical in phraseology with Section 16(3), the House Committee on Interstate and Foreign Commerce expressly reserved judgment as to whether they "apply to proceedings instituted by the United States but * * * left that question for determination judicially as appropriate cases may arise." H. Rep. No. 766, *supra,* at p. 2.[8] Earlier,

[8] While the quoted language refers to "proceedings instituted by the United States," it would be absurd to attribute to Congress the belief that the short statute of limitations might bar the United States as plaintiff but afford it no protection as defendant. Cf. *Stanley* v. *Schwalby,* 147 U. S. 508, 515-517.

speaking of identical provisions in a predecessor bill (H. R. 2759, 80th Cong., 1st sess.), Chairman Wolverton of the House Committee declared unequivocally that their terms would apply to the Government.[9] These congressional views underline the need for resolution by this Court of a question which now affects the numerous suits against the Government by carriers of all types in both the district courts and the Court of Claims.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition should be granted.

PHILIP B. PERLMAN,
Solicitor General.

FEBRUARY, 1950.

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[9] "Mr. Wolverton. * * * I think it clear that the limitations for which the bill provides would apply to the United States as a shipper, just as to any other shippers * * *. I think, too, that there is every reason why these limitations should apply to the United States the same as to any other shipper." 94 Cong. Rec. 131.

The I. C. C., adhering to its position in *United States* v. *Director General, supra,* note 7, shares this view. *Ibid.*

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